



LIQUOR CONTROL DIVISION

Frequently Asked Questions

Persons Interested in Becoming a Liquor Store Agent

Q. [What is the process for opening a new agency liquor store in Montana?](#)

A. First, it is necessary to determine if the community is eligible to open a new agency liquor store.

Q. [How do I determine if a community is eligible to have a new agency liquor store?](#)

A. An agency liquor store established after April 25, 1995, may not be located in a community that is closer than 35 miles to another community in which an agency liquor store is presently located. The exception is when the most recent population estimates show a 25% growth in population or a growth of 1,000 inhabitants within a two-year period, whichever is greater, and when this population increase is reasonably expected to continue for at least five years. The nearest community with an operating state liquor store is more than 35 miles away as measured from the nearest community boundaries along the shortest route on a paved road between the two communities, unless the new store is also located in a community eligible for more than one store. (MCA 16-2-109)

Q. [Can I open an additional agency liquor store in a community that has an existing Agency liquor store?](#)

A. The number of agency liquor stores in a community is based on population. The number of agency liquor stores that may be located in a community may vary. For example, there may be:

- (a) one agency liquor store if the population is 0 – 12,000;
- (b) two agency liquor stores if the population is 12,001 – 52,000;
- (c) three agency liquor stores if the population is 52,001 – 92,000;
- (d) four agency liquor stores if the population is 92,001 – 132,000; or
- (e) five agency liquor stores if the population is 132,001 – 172,000; and
- (f) one additional agency liquor store within increments of population of 40,000 inhabitants above 172,000.

In communities that are eligible for more than one agency liquor store, an agency liquor store established after April 25, 1995, may not be located within a one-mile radius of any other agency liquor store in the community. (MCA 16-2-109)

Q. [What defines a community?](#)

A. Community means in an incorporated city or town, the area within the incorporated city or town boundaries. In other communities it is the area identified by the United States Census Bureau as a community for census purposes. (MCA 16-1-109)

Q. Once it is determined that a new store may be opened, what is the process?

A. The department may conduct a public hearing to open a new agency liquor store when all of the following conditions are met:

(a) The department receives a petition signed by at least the minimum qualified petitioners. The minimum qualified petitioners means the number of adults who reside in the community, which equals 5 percent of the community population as determined in the most recently available census estimate for the community or 20 adults who reside in the community if 5 percent of the community population is less than 20. The petition must clearly state that its purpose is to have the department open a new agency liquor store in the community which will be operated by an agent under contract with the department. The petition must show the printed name, mailing address, and signature of each person signing the petition.

(b) The department receives a letter from a person willing to submit a proposal or bid to operate a new agency liquor store in the community. This person must control or expect to control a building in the community that could be used as the new agency store location.

(c) The number of agency liquor stores currently operating in the community does not exceed the limit in the example above.

(d) The nearest community with an operating agency liquor store is more than 35 miles as measured from the nearest community boundaries along the shortest route on a paved road between the two communities unless the new agency liquor store is to be located in a community eligible for more than one agency liquor store.

(e) The department has not solicited for an agent in the community within the previous three years.

(f) The petition identified in (a) and the letter from a potential agent in (b) must be received within six months of each other.

When all of the conditions are met, the department may hold a public hearing to receive comments from interested parties concerning the department's intention to advertise for proposals or bids for a new agency liquor store. The procedures to determine if a public hearing will be held and, if so, the location of the public hearing are:

(a) the department will publish a notice to the public that will contain the following:

(i) the department's intent to open a new agency liquor store and the community it intends to open it in; and

(ii) outline how the public can provide written protests; and

(b) notice of the department's intent will be advertised twice during a two-week period in the legal section of:

(i) the nearest daily newspaper in general circulation for the affected area; and

(ii) in the local community newspaper, if there is one.

If the department receives no written public protests from residents in the county or adjoining counties, the department may solicit to open a new agency liquor store in the proposed community without holding a public hearing.

If the department receives at least one written public protest from residents in the county or adjoining counties, the department shall schedule a public hearing to determine whether the protest presents sufficient cause to deny the request.

If the department receives a specified number of written public protests from residents in the county or adjoining counties, the public hearing will be held in the community in which the new agency liquor store is proposed. The specified number of written public protests from residents shall equal:

- (a) a quantity greater than 25 percent of the number of all-beverage licenses determined for that quota area; and
- (b) no less than two.

If the provisions are not met, the hearing will be held in Helena.

If the need for a public hearing is determined, all qualified protesters will be notified of:

- (a) the date, time, and place where the public hearing will be conducted; and
- (b) the name and address of the hearing officer appointed by the department to conduct the hearing.

The hearing officer will preside over the hearing, which is not a contested case proceeding, and collect the information presented. The hearing will address the following:

- (a) whether the department should proceed with its intention to advertise for proposals or bids for a new agency liquor store for the community;
- (b) whether any limitations or restrictions on the location and operation of the new agency liquor store should be considered; and
- (c) whether any other issues directly related to the operation of the proposed new agency liquor store in the community or its possible effects on the community should be considered in the determination of whether to proceed with its intention to advertise for proposals or bids for a new agency liquor store in the community.

Within six weeks following the public hearing, the hearing officer will submit a report to the department. This report will:

- (a) identify all of the issues raised at the hearing;
- (b) recommend whether proceeding with the advertisement for proposals or bids for a new agency liquor store is in the best interest of the state and the community; and
- (c) recommend whether any limitations or restrictions on the location and operation of the new agency liquor store should be considered.

One week following receipt of the hearing officer's report, the department will decide what action will be taken in response to the hearing officer's recommendations.

Notice of the department's decision will be mailed to all parties who signed the petition, submitted a written protest, or attended the public hearing and provided a mailing address.

If the decision is to proceed with advertising for requests for proposals or invitations for bids for a new agency liquor store, the process to select an agent will be conducted.

If no proposals or bids are received in response to a request for proposals or invitation for bids, or none of the proposals or bids received meet the minimum requirements specified in the request for proposals or the invitation for bids, the department will make no further solicitation for a new agency liquor store in the community for three years.

Q. How is an agent selected?

A. The agent for an agency liquor store will be selected by competitive sealed bids according to the procedures under the Montana Procurement Act, Title 18, chapter 4, MCA.

Q. What are the costs associated with opening a new agency liquor store?

A. There are no costs associated with the Invitation for Bid (IFB) process that are payable to the Department of Revenue or the Department of Administration. In fact, a person should not incur any costs associated with opening a new agency liquor store until they are awarded a contract. Once the entity is offered the contract, they will be required to provide proof of insurance and proof of control of the premises. Operating equipment and associated costs necessary to operate the agency are the responsibility of the agent. Examples of expenses you may expect include, but are not limited to, a computer, fax machine, hand trucks or payroll.

Q. Can a person purchase an existing agency liquor store?

A. Yes. A current agent may sell their agency liquor store. Agency liquor stores operate under the terms of an agreement. The agreement is called an Agency Franchise Agreement. An agent may assign an Agency Franchise Agreement to a person, who, upon approval of the Department of Revenue, is named agent in the agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agreement. The department may not unreasonably withhold approval of an assignment request. (MCA 16-2-101)

Q. How much does existing agency liquor store cost?

A. The purchase price is between the current agent and the potential buyer. The department is not involved with the selling price, with the exception of staying abreast of who is responsible for any outstanding balances and how they will be paid.

Q. How long does the assignment process take?

A. The process takes a minimum of 60 days from the time in which the department is notified by the current agent of their intent to sell their Agency Franchise Agreement. An application process is utilized to approve the buyer and ensure they are qualified to become an agent. Upon approval, the actual date of the sale and the assignment of the agency franchise agreement will be agreed upon. Determination of which party will be responsible for the store's outstanding debts to the department will also take place. (MCA 16-2-101)

Q. Does an agent of an agency liquor store have a liquor license?

A. No. An agent does not have a liquor license. An agency liquor store is operated under a contract with the Department of Revenue. The contract is called an Agency Franchise Agreement.

Q. What is the term of an Agency Franchise Agreement?

A. The term of the agreement is for a ten-year period. Renewal must be performed every ten years if the requirements of the Agency Franchise Agreement have been satisfactorily performed. (MCA 16-2-101)

Q. Who will my customers be?

A. Agents sell liquor to all-beverage licensees (bars and restaurants) and the general public. (MCA 16-2-201)

Q. How is an agent compensated?

A. An agent will receive compensation in the form of a commission rate discount. The agent will earn the commission rate discount through price reduction on the posted price of liquor that the agent purchases from the state liquor warehouse. The posted price is the price per bottle of liquor fixed by the Department of Revenue and is the wholesale price all agents throughout the state must use for selling liquor to all-beverage licensees and is the minimum retail price to other customers. For example, agents with a 10% commission rate discount will purchase a 12-bottle case of liquor from the state liquor warehouse that sells at a state posted price of \$10 per bottle for \$108 (\$120-\$12).

The 2015 Legislature passed SB193 which, effective February 1, 2016, eliminates the three existing discount rates provided to agency liquor stores and creates one commission rate. The revised commission rate structure takes effect on February 1, 2016, and will be implemented over a course of three years. On February 1, 2016, each agency liquor store's commission rate will be adjusted by taking the agency liquor store's combined commission rate on December 31, 2015, plus 1/3 of the difference between the agency liquor store's commission rate as determined in the chart below and the agency liquor store's combined commission rate on December 31, 2015. Commission rates will be reviewed annually. The commission discount rate will be effective February 1 through January 31. The annual commission discount rates range from 12.15% to 16.00%. The annual commission discount rate is based on the total posted price of liquor purchased in the previous calendar year. (MCA 16-2-101)

Commission rates will be determined based on the following chart and will be adjusted annually using the consumer price index:

Commission Rate	Prior Calendar Year Liquor Purchases	
16.00%	\$0.00	\$250,000.00
15.50%	\$250,000.01	\$500,000.00
15.00%	\$500,000.01	\$720,000.00
14.50%	\$720,000.01	\$950,000.00
14.00%	\$950,000.01	\$1,525,000.00
13.50%	\$1,525,000.01	\$1,850,000.00
13.00%	\$1,850,000.01	\$2,250,000.00
12.75%	\$2,250,000.01	\$3,250,000.00

12.50%	\$3,250,000.01	\$7,000,000.00
12.15%	\$7,000,000.01	+

Q. [How much can an agent sell liquor for at an agency liquor store?](#)

A. An agent must sell liquor to all-beverage licensees (bars and restaurants) at the state's posted price as listed in the current quarterly Montana liquor price book indicated for that month. An agent must offer 8% reduction on case lot sales to licensees. An agent may mark up the price to the general public exceeding the posted price. An agent may never sell for a price less than the posted price unless the product has been discontinued. (MCA 16-2-201)

Q. [Can an agent let a bar or individual take a bottle of liquor and pay for it later?](#)

A. No. Credit may not be extended to a customer for the purchase of liquor. This applies to all customers including all-beverage licensees. All purchases must be paid for on a cash basis upon delivery. The methods of payment are cash, check, or credit card. (MCA 16-2-203)

Q. [Can an agent accept credit cards as a form of payment from walk-in customers and from licensees?](#)

A. Yes. Payment in the form of a credit card is considered a cash basis.

Q. [Can an agent charge a fee to a customer that uses a credit card for payment of liquor products?](#)

A. No. You may not charge a fee for credit card purchases.

You cannot charge the customer a fee if they use a credit card to pay for their purchases. You cannot charge a licensee more than the state's posted price. The posted price is a specific amount, set by statute and by the department to make sales of alcohol from the agency liquor store to the licensee very specific and equal for all purchasing licensees. The posted price does not include an option to add on additional fees. By adding a credit card fee, you would be selling product for more than the state's posted price. (MCA 16-1-106(18) and 16-2-203)

Q. [What hours can an agency liquor store be open?](#)

A. An agency liquor store is required to be open a minimum of six hours per day. Those hours must be between 8 a.m. and 2 a.m. as stated in MCA 16-2-104.

Q. [What days are agency liquor stores required to be open?](#)

A. An agent is required to be open Tuesday through Saturday. You must be closed on Sundays, Mondays, and all legal holidays. However, you may be open on Mondays that are not legal holidays if 51% of the all-beverage licensees in your immediate market area sign a petition agreeing that agency liquor stores located within the immediate market area may be open on Mondays. The petition must be on

a form prescribed by the department; it's online at: <http://revenue.mt.gov/home/liquor/forms>. The department will verify the validity of the signatures on the petition. If the department determines that the petition contains sufficient and valid signatures, all agency liquor stores within the market area are allowed to transact business on Mondays that are not legal holidays. If a holiday is on a Sunday and authorized to be open on Mondays that are not holidays, you may be open on Monday. However, the liquor warehouse will observe the holiday on Monday and will not be open. (MCA 16-2-104)

Q. [How often does an agent place an order?](#)

A. An agent can order on a prescribed day each week.

Q. [What is the minimum amount of cases that an agent can order?](#)

A. To be cost effective, the minimum amount of cases that you may order is four cases. This can be a combination of full cases and repack units.

Q. [Can an agent order products in less than full case lots?](#)

A. Yes. The department offers approximately 600 products that can be ordered in less than full case lots.

Q. [Can I obtain liquor to sell in my store directly from a distillery?](#)

A. Beginning January 1, 2016, a distillery that produces less than 25,000 gallons of liquor annually may deliver product directly to agency liquor stores. A distillery can only deliver product in full case lots. You can request the product from the department on our normal weekly order form and receive it on your regular scheduled delivery date, or you can contact the distillery directly. Keep in mind that it is at each distillery's discretion as to how far they will deliver from their licensed premises. Distilleries will report to the department deliveries made to agency liquor stores. Agency liquor stores will be invoiced by the department for product received from a distillery. (MCA 16-4-311(3)(a))

Q. [How long does an agent have to pay for liquor purchases made from the state liquor warehouse?](#)

A. All liquor purchased from the liquor warehouse must be paid for within 60 days from the date on which the department invoices the liquor to the agency liquor store. (MCA 16-2-101)

Q. [Can an agent deliver?](#)

A. Yes, an agent may deliver to licensees. Payment must be received upon delivery. (MCA 16-2-106)

Q. Can an agent charge a delivery fee?

A. No. The posted price does not include an option to add on additional fees. By adding a delivery fee, you would be selling product for more than the state's posted price. (MCA 16-1-106(18) and 16-2-203)

Q. Can an agent offer samples of liquor in the store?

A. No. An agent cannot allow any alcoholic beverage container to be open or any alcoholic beverage to be consumed on the premises of the agency liquor store. (MCA 16-2-107)

Q. What can an agent sell in an agency liquor store besides liquor?

A. An agent can sell just about anything in an agency liquor store except beer, which includes malt-based wine coolers. An agent can sell table wine they purchase from a wine distributor without having to acquire an additional license from our department. (MCA 16-2-101, 16-2-203, and 16-3-103)

Q. Why are some agency liquor stores able to sell beer?

A. Agency liquor stores that acquired a retail beer license prior to 1994 fall within a grandfather clause in law that allows them to sell beer and malt-based wine coolers. (MCA 16-4-401)